Terms and Conditions

1. **Agreement**
   a) Together with the Proposal, these Terms and Conditions form part of the Agreement between CyberCX and the Client for the provision of the Services. These Terms and Conditions will apply to any further Services provided by CYBERCX to the Client unless otherwise agreed in writing.
   b) The terms of any Proposal will prevail to the extent of any inconsistency with these Terms and Conditions.
   c) Defined terms and rules for interpretation are set out in clause 20.

2. **Term**
   CyberCX will provide the Services to the Client in accordance with the Agreement from the Commencement Date until the earlier of the End Date or the termination of the Agreement.

3. **Warranties by CyberCX**
   a) CyberCX warrants that:
      - it will perform the Services in a competent and prudent manner; and
      - the Services will be performed in accordance with all applicable laws, rules, regulations, standards.
   b) OTHER THAN AS EXPRESSLY PROVIDED IN THE PROPOSAL OR THESE TERMS AND CONDITIONS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES ARE EXCLUDED.

4. **Obligations of Client**
   The Client will provide CyberCX with access to its computer systems, premises, data and any other information in the manner reasonably required by CyberCX to perform the Services in accordance with the Agreement.

5. **Authority**
   a) The Client authorizes CyberCX Representatives to access and use the Client's computer systems as reasonably required by CyberCX solely for the provision of the Services,
   b) The Client will provide CyberCX with a signed authority in the form set out in the Proposal from such persons as CyberCX reasonably requires, prior to the provision of any Services by CyberCX.

6. **Acknowledgments**
   a) In performing the Services, CyberCX acknowledges that the systems being tested may be live operating systems and CyberCX will use all due care to minimize the impact of any tests which form part of the Services.
   b) The Client acknowledges that:
      - CyberCX may immediately halt any testing which forms part of the Services, if directed by the Client or if CyberCX suspects that the Client's information or operating systems are being unduly impacted; and
      - provided CyberCX has complied with clause 6-a, CyberCX will not be in breach of the Agreement if the Services impact the information or operating systems of the Client, or performance of the Services is halted in accordance with clause 6-b bullet #1.

7. **Service Schedules**
   a) To the extent the Services include:
      a. Security Testing Services, the terms in Schedule 1 apply; and
      b. Digital Forensic Services, the terms in Schedule 2 apply,
         and the terms of each schedule will take precedence over all terms.

8. **Governance Risk and Compliance**
   b) To the extent the Services include governance, risk or compliance services, this clause 8 applies.
   c) The Client must ensure that the specifications relating to the Products and Services, and the use of the Services, satisfies all of the Client's legal and regulatory obligations and any other Client compliance requirements including, without limitation, compliance by the Client with any Law, corporate governance matters and internal company policies.
   d) Except to the extent prescribed in the specifications Proposal, or SOW, nothing in the Agreement requires CyberCX to ensure, recommend or facilitate the Client's compliance with any matter referred to in this clause 8, and the Client acknowledges that it has obtained its own advice on such compliance matters.

9. **Service Fees and Expenses**
   e) The Client will pay CyberCX the Service Fees in consideration of CyberCX providing the Services to the Client, in accordance with this clause 7. The Service Fee shall be exclusive of taxes, which CyberCX shall add to its invoices at the prevailing rate.
   f) The Client will pay any expenses to be incurred by CyberCX in performance of the Services as set out in the Proposal ("**Expenses**"), provided such Expenses are agreed in advance with the Client.
   g) The Client will pay the Service Fees (together with taxes where appropriate) and Expenses (if any) in the manner set out in the Proposal. If no payment terms are specified in the Proposal, the Client will pay the Service Fees and Expenses (or such portion as determined by CyberCX) within 30 Business Days of the end of each month in which the Services are provided.

h) The Client will not be required to pay the Service Fees or Expenses (if any) unless CyberCX has provided a valid tax invoice to the Client for the Services performed.

i) The Client must pay all undisputed amounts payable or owing by it to CyberCX under the Agreement

j) Any variation to the Services or the manner in which the Services are to be performed and provided by CyberCX to the Client may result in additional Service Fees, expressly agreed to in writing, (other than as a result of breach of this Agreement by CyberCX). This includes variations resulting from alterations to the timeframes due to Client unavailability, changes to any scope of work forming part of the Services or a Proposal, CyberCX being required to repeat or perform the same Services, modifications to the Client's hardware, software or other technical infrastructure and any additional information uncovered in performing the Services or provided by the Client.

10. Non-Performance of Services

a) CyberCX will not be required to remedy any default or otherwise perform or re-perform any Services where the non-performance is caused or contributed to by the Client (including the Client's employees, agents or contractors) or any failure of the Client's systems or IT infrastructure during the provision of the Services.

11. Force Majeure

a) CyberCX will not be liable for performance of any of its obligations under the Agreement as a result of an act of God, national emergency, war, prohibitive governmental regulations, labour dispute or any other cause beyond CyberCX's reasonable control. If such a force majeure event occurs, CyberCX will notify the Client of the occurrence and expected duration of that event.

b) If a force majeure event renders performance of the Agreement impossible for a continuous period of at least fourteen (14) Business Days, either party may by notice to the other, terminate the Agreement.

12. Warranties by Client

The Client warrants that it is (i) validly in existence under all applicable laws, (ii) duly authorized to enter into the Agreement, (iii) has obtained all required consents and approvals to do so and (iv) is not contravening any law, judgment, order or rule of any Government Agency or any agreement by entering into the Agreement.

13. Liability of CyberCX

a) NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR RESTRICT EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF THAT PARTY OR OF ITS EMPLOYEES WHILE ACTING IN THE COURSE OF THEIR EMPLOYMENT, OR (B) FRAUD.

b) SUBJECT TO CLAUSE 11-A, BUT OTHERWISE NOTWITHSTANDING ANY OTHER CLAUSE OF THE AGREEMENT, CYBERCX WILL NOT BE LIABLE FOR ANY CLAIM RELATING TO, ARISING OUT OF OR IN CONNECTION WITH ANYTHING WHICH IS DONE (OR IS NOT DONE) BY THE CLIENT WITHOUT CYBERCX'S PRIOR WRITTEN APPROVAL.

c) SUBJECT TO CLAUSES 11-B, CYBERCX'S MAXIMUM AGGREGATE LIABILITY HOWEVER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO $1,000,000.

d) CYBERCX WILL NOT BE LIABLE FOR LOSS ARISING FROM OR IN CONNECTION WITH ANY REPRESENTATION (OTHER THAN FRAUDULENT REPRESENTATIONS) AGREEMENTS STATEMENTS OR UNDERTAKINGS MADE PRIOR TO THE DATE OF EXECUTION OF THIS AGREEMENT OTHER THAN THOSE REPRESENTATIONS AGREEMENTS STATEMENTS AND UNDERTAKINGS CONFIRMED BY A DULY AUTHORIZED REPRESENTATIVE OF CYBERCX IN WRITING OR EXPRESSLY INCORPORATED OR REFERRED TO IN THIS AGREEMENT.

14. Termination

a) If either party breaches a term of the Agreement ("**Defaulting Party**") and the breach can be remedied, the other party ("**Non-Defaulting Party**") may give the Defaulting Party not less than seven (7) days' notice to remedy that breach. If the breach is not remedied within the period stipulated in the notice, the Non-Defaulting Party may give the Defaulting Party a further notice immediately terminating the Agreement.

b) Either party may terminate the Agreement by notice to the other party immediately upon any of the following events:

- if the other party commits a material breach of this Agreement which cannot be remedied;
- if the other party ceases to carry on business as a going concern;
- if an Insolvency Event occurs in relation to the other party; or
- if the other party commits a serious criminal offence.

c) Termination of the Agreement will not affect any rights or obligations of party which arose prior to the date of termination. CyberCX will not be liable to the Client for any Claims by the Client relating to the termination of this Agreement by CyberCX in accordance with this clause 12.

15. Confidentiality

a) Each party owns all of its Confidential Information. During the Agreement and after its termination, each party can use or disclose the other party's Confidential Information only to (i) perform the Services, (ii) professional advisors on a confidential basis for the purpose of obtaining advice, (iii) if the disclosing party has consented in writing, or (iv) if required by law.

b) Upon termination of the Agreement, the recipient of Confidential Information must at the disclosing party's discretion, deliver to the disclosing party or destroy all Confidential Information in the recipient's possession or under its control; and delete all Confidential Information held electronically in any medium in the recipient's possession or under its control. The recipient may retain one copy of any Confidential Information as required

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by law, which must be retained for compliance purposes, contained in which cannot be practicably deleted or information which must be retained as required by Law, any accounting standard or the rules of any stock exchange or for sound corporate governance purposes and any information contained in working papers or files prepared by CyberCX in connection with that report.

16. **Data Protection**
   a) The Client warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to CyberCX under or in connection with the Agreement.
   b) CyberCX warrants that:
   - it will act only on instructions from the Client in relation to the processing of any Personal Data performed by CyberCX on behalf of the Client. It will hold the Personal Data in confidence and strictly for use in connection with this Agreement and not use the Personal Data for any other purpose nor to contact individuals other than as strictly necessary to enable the provision of the services; and
   - it shall comply with the provisions of the Applicable Data Protection Legislation in relation to all Personal Data that is processed by it in the course of performing its obligations under this agreement. In particular, but without limitation CyberCX shall warrant it has in place appropriate security measures (both technical and Organizational) against unlawful or unauthorized processing of Personal Data and against loss or corruption of Personal Data processed by CyberCX on behalf of the Client; and
   - to the extent permitted by law, it will notify the Client of any actual personal data breach within 48 hours at the address listed in the Agreement; and
   - it will fully co-operate with the Client in supporting compliance with Applicable Data Protection Legislation, including but not limited to, assisting the Client in providing subject access and allowing data subjects to exercise their rights under Data Protection Legislation and promptly acting on the Sponsor's requests with respect to the Personal Data, which may include their secure destruction; and
   - should in fulfilling their obligations under the Agreement or pursuant to other lawful instructions from the Client, Personal Data may be transferred, directly or via an onward transfer, outside the US, CyberCX shall rely on measures such as Standard Contractual Clauses, Privacy Shield or Binding Corporate Rules as allowed by Applicable Data Protection Legislation.

17. **Intellectual Property**
   a) In relation to any report provided by CyberCX to the Client pursuant to the Agreement, CyberCX grants the Client an irrevocable and non-exclusive licence to use the content of that report subject to the terms of the Agreement, provided that CyberCX retains copyright in that report.
   b) Subject to clause 15-a, all Intellectual Property and similar rights in any other document, work or other matter developed, created, owned or contributed to by CyberCX belongs to CyberCX and CyberCX owns all rights, title and interest in that Intellectual Property.
   c) During the Term and after the End Date the Client will not use any of CyberCX's Intellectual Property except as expressly permitted by the Agreement nor register or use any name or mark similar to or capable of being confused with CyberCX's name, business name or trademark.
   d) Subject to this clause 15, any Intellectual Property of the Client as at the date of the Agreement will remain the property of the Client.

18. **CyberCX Staff**
   a) While CyberCX is providing any Services to the Client and for a period of 12 months after the End Date, the Client will not make an offer of employment to any employee or contractor of CyberCX. In addition, during that period the Client will also not solicit, induce or entice any employee or contractor of CyberCX to cease to work for CyberCX.
   b) Clause 16-a does not prohibit the Client from publishing a bona fide employment opportunity with the Client to the general public or making an offer of employment to a person who has responded to such an advertisement or publication.

19. **Dispute Resolution**
   a) Any dispute or disagreement in relation to or in connection with the Agreement in any matter ("**Dispute**") is to be resolved in accordance with the procedure provided in this clause 17. In the event of a Dispute, the party seeking to have it resolved must issue to the other parties a notice setting out all details relevant to the Dispute ("**a Dispute Notice**").
   b) Within 14 days of receipt of a Dispute Notice, the senior management of the parties to the Dispute shall meet to negotiate resolution of the Dispute. The parties agree that those negotiations must be conducted in good faith.
   c) In the event that the Dispute is not resolved in accordance with clause 17-b, within 14 days of receipt of a Dispute Notice, the Parties will attempt to settle it by mediation in accordance with the State of Maryland Alternative Dispute Resolution procedures. Unless otherwise agreed by the parties, the mediator shall be nominated in the State of Maryland To initiate the mediation a party must serve notice in writing ("ADR Notice") to the other party requesting a mediation. The mediation will start not later than [number] days after the date of the ADR notice. If the Dispute is not resolved by mediation, either party will be entitled to take legal action.
   d) Nothing contained in this clause 17 will prevent a party from seeking urgent interlocutory relief.

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20. **Miscellaneous**

a) Unless otherwise specified, the Agreement contains the entire agreement between the parties in respect of the subject matter of the Agreement and supersedes any prior agreement or understanding (if any) between the parties in relation to the subject matter of the Agreement.

b) Any amendment to a term of the Agreement must be made in writing executed by the parties.

c) The Client can only assign its rights and obligations under this Agreement with the prior written consent of CyberCX, unless such assignment is in relation to an internal reorganisation of the Client's business and where the assignment will be made to another member of the Client's group. No one other than a party to the Agreement, their successors and permitted assignees shall have any right to enforce any of its terms.

d) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

e) The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed applicable laws and the parties irrevocably agree to submit themselves to the exclusive jurisdiction of the courts in the State of Maryland.

f) The Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument. Satisfactory evidence of execution of this Agreement will include evidence of execution sent by electronic transmission by the relevant party and in such case, the executing party undertakes to produce the original as soon as reasonably practicable thereafter.

g) The Agreement will only come into effect and be binding on the parties when it is duly executed by all of the parties.

h) The parties will pay their own costs in respect of the negotiation, preparation and execution of the Agreement.

i) The parties are independent entities. The parties are not principal and agent, partners, trustee and beneficiary or employer and employee.

21. **Notices**

a) Any notice to be given by one party to the other must be (i) signed by the party giving the notice or by one of its officers or its duly authorized lawyer or agent and (ii) hand delivered or sent by prepaid post, facsimile or electronic mail to the address, or electronic mail address (as the case may be) set out in the Agreement (or any other address or electronic mail address that a party notifies to the other party from time to time).

b) Notice will be deemed sufficiently given in the case of (i) hand delivery, on the date of delivery (ii) pre-paid post two Business Days after being sent or (iii) electronic mail, on the day of transmission provided that the sender can give evidence of transmission and the intended recipient does not give evidence of non-receipt.

22. **Interpretations and Definitions**

In the Agreement unless qualified by or inconsistent with the context:

a) A reference to one gender includes the other genders; a reference to a person includes a body corporate or un-incorporate and vice versa; the singular includes the plural and vice versa.

b) A reference to a clause is a reference to a clause of this Agreement. A reference to a Schedule is a reference to a schedule to this Agreement.

c) Where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings.

d) Headings are for convenience of reference and will not affect the interpretation.

e) Any schedules form part of the Agreement.

f) The Agreement is written in plain English as far as possible. Its terms are to be interpreted so as to give efficacy to the parties' agreement. No rule resolving a doubt as to interpretation against the party preparing the Agreement will apply. The specific provisions will not limit the interpretation of general provisions.

g) The Agreement binds the parties' respective heirs, executors, administrators, legal personal representatives, successors and permitted assigns.

h) "**Agreement**" means the binding contract formed by acceptance of the Proposal, these Terms and Conditions together with any Schedules and valuable consideration or the provision of the Services.

i) "**Applicable Data Protection Legislation**" means any applicable law relating to the processing, privacy, and use of Personal Data, as applicable to the parties and/ or the subject matters under the Agreement and as may be amended/replaced from time to time, including:(a) the Data Protection Act 2018, (b) the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ("GDPR"), and/or any corresponding or equivalent national laws or regulations;

j) "**Business Day**" is a day other than a Saturday, Sunday or public holiday.

k) "**Claim**" means, in relation to any person, any damage, loss, cost, expense or liability incurred by the person or a claim, demand, action, proceeding or judgment made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent.

l) "**Client**" means the person identified as the Client in the Proposal.

m) "**Commencement Date**" means the date specified in the Proposal for commencement of performance of the Services by CyberCX. If no such date is specified, the Commencement Date is the date the Proposal is signed by CyberCX and the Client.

n) "**Confidential Information**" means any information obtained by one party concerning the other party including but not limited to its business activities and that (i) by its nature is confidential, (ii) is designated by the disclosing party as confidential or (iii) the recipient knows or ought to know is confidential; but excludes information that is publicly available, except as a result of a breach of this Agreement or was disclosed to the recipient by a third party who was not under a duty of confidentiality in relation to that disclosure.

o) "**CyberCX**" means CyberCX USA INC.

p) "**CyberCX Representatives**" means representatives of CyberCX authorized by CyberCX in writing for the purpose of the Agreement.

q) "**Digital Forensic Services**" includes:
   i.   digital forensic investigation;
   ii.   digital forensic analysis;
   iii. forensic reporting and opinions;
   iv.   threat hunting;
   v.   cyber threat intelligence and risks assessment; and
   vi.   and other activities carried out for, or on behalf of, the Client under a Proposal, Quote or SOW.

r) "**End Date**" means the date by which the Services must be completed as specified in the Proposal. If no such date is specified, the End Date is the date upon which the Services are completed by CyberCX.

s) "**Government Agency**" means a government or a governmental, semi-governmental or judicial entity or similar authority, and includes a self-regulatory Organization established under statute or a stock exchange.

t) "**Insolvency Event**" means any of the following:
   - the threatened or actual appointment of a voluntary administrator, liquidator, provisional liquidator, receiver, receiver and manager, controller, trustee in bankruptcy, administrator or other person of similar office, including any application to a court for such an appointment;
   - entry into or proposing an arrangement or compromise for the benefit of creditors;
   - the levy or enforcement of a writ of execution, order or judgment;
   - becoming unable to pay debts as and when they fall due for payment;
   - the taking of possession or control of any asset by a person under an Encumbrance; or
   - failing to satisfy or to apply to have set aside a statutory demand, a bankruptcy notice or other similar form of statutory notice within the time specified in the demand or notice.

u) "**Intellectual Property**" means all intellectual property rights including, without limitation:

v) patents, copyright, registered designs, rights in circuit layouts, trademarks, inventions, secret processes, computer code, discoveries and improvements and modifications of any kind;

w) the right to have confidential information kept confidential; and

x) any application or right to apply for registration of any of the rights defined in this clause 20.19.

y) "**Notice**" means written notice and "**notify**" means notification in writing.

z) "Personal Data" has the meaning given to it by "Applicable Data Protection Legislation"

aa) "**Proposal**" means a written proposal, offer or quote offered by CyberCX to the Client in relation to the Services.

bb) "**Security Testing Services**" means penetration testing, red teaming, intrusion techniques, code reviews, security threats and risks assessment and any other security testing or assessment activities carried out for a Clients under a Proposal, Quote or SOW.

cc) "**Services**" means any services to be provided by CyberCX to the Client as set out in a Proposal, and any other services agreed by CyberCX and the Client in writing for the purpose of the Agreement.

dd) "**Service Fees**" means the fees payable to CyberCX by the Client in consideration of CyberCX providing the Services as set out in the Proposal or otherwise agreed in writing between CyberCX and the Client.

ee) "**Term**" means the term of the Agreement set out in clause 2.

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Schedule 1: SECURITY TESTING TERMS

1.   Application of these Terms

(a)   These Security Testing Terms apply if security testing and assurance services are provided by CyberCX.

(b)   The Client warrants that it is aware of the nature of the Security Testing Services, in particular that the Security Testing Services may include:

    (i)   simulating or performing controlled Cyberattacks on the Client's Systems;

    (ii)   deliberate attempts to penetrate the security Systems of the Client, which may be provided by a third party;

    (iii)   red teaming (including, but not limited to, deliberately masquerading as a hostile attacker with the intention of detecting vulnerabilities) activities in relation to the Client and its premises and Systems; or

    (iv)   deliberately allowing unauthorized access to the Client's network or Systems for the purpose of analysing threat vectors and origination; and

    (v)   acts that may put the Client in breach of its agreements including, but not limited to, third party supplier's terms of supply.

2.   Acknowledgment and liability

(a)   The Client accepts that the Security Testing Services:

    (i)   are sample testing activities only and cannot account for all possible ways a third party could breach the Client's security measures or Systems;

    (ii)   do not implement any security measures and will not prevent security or data breaches, or Cyber-attacks;

    (iii)   could result in interruptions or degradations to the Client's Systems and accepts those risks and consequences; and

    (iv)   although carried out by professional CyberCX Personnel and tools from trusted resources, carry an element of risk that can never be fully eliminated, and the Client accepts that there is no guarantee that every vulnerability in its Systems will be identified during the Security Testing Services.

(b)   In carrying out the Security Testing Services, the Client acknowledges and agrees that CyberCX:

    (i)   as agent of the Client is considered to be party to a communication in the case of intercepting any private communication on the Client's Systems,

    (ii)   is expressly authorized by the Client to perform such Services (and all tests reasonably necessary to perform the Services) on the relevant network resources and IP addresses. The Client represents that, if it does not own such network resources, it has requisite consent and authority to engage CyberCX to provide the Security Testing Services;

    (iii)   provides no warranty or guarantee as to the outcome of the Security Testing Services, all testing has limitations, and that such testing cannot guarantee discovery of all weaknesses, noncompliance issues, or vulnerabilities; and

    (iv)   may use various proprietary methods and software tools to probe network resources, and to detect actual or potential security flaws and vulnerability, which will not be revealed by CyberCX.

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Schedule 2: DIGITAL FORENSIC TERMS

1. Application of these Terms

(a) These Digital Forensic Services Terms apply if digital forensic services are provided by CyberCX.

(b) The Client warrants that it is aware of the nature of the Digital Forensic Services and that should CyberCX form a reasonable belief or identify evidence of serious criminal conduct during an engagement, CyberCX may be required to notify law enforcement.

2. Acknowledgment and liability

(a) The Client acknowledges and agrees that the Digital Forensic Services:

    (i) are intended only for the Client only and outputs may not be provided to any third party without CyberCX's prior written consent;

    (ii) are not intended to provide any specific results, other than to identify factual findings, analysis of evidence, and responses to specific questions related to the provision of our expert opinion;

    (iii) are not legal advice or legal opinions and no output constitute legal advice;

    (iv) are provided 'as-is'; and

    (v) are not delivered against any standards or guidelines unless otherwise agreed in writing.

(b) In carrying out Digital Forensic Services, the Client agrees that CyberCX:

    (i) is expressly authorized by the Client to perform such Services (and all such tasks and tests reasonably contemplated by or reasonably necessary to perform the Services) and the Client does so in compliance with all relevant Laws (including the *Privacy Act*)

    (ii) is acting on behalf of the Client, so in the case of intercepting any private communication on the Client's Systems, CyberCX as agent of the Client is considered to be party to such private communication;

    (iii) provides no warranty or guarantee as to the outcome of the Digital Forensic Services, or resulting legal proceedings, and (unless required) does not implement any security measures or controls;

    (iv) will rely on the information provided by the Client as true and correct, and that unless otherwise agreed, will not undertake any review, validation or audit to ascertain the completeness or accuracy of information provided; and

    (v) leverages anonymized cyber threat intelligence gained through previous engagements for other clients. Through the course of our work, CyberCX may collect cyber threat intelligence from the Client Systems, focused on the attacker's tools and methods. Such collection will not include information which may identify the Client Organization, networks, Systems, sensitive information, staff, customers, related parties, or include any Client confidential information.

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